No. 16-1140

In the Supreme Court of the United States

NATIONAL INSTITUTE OF FAMILY AND LIFE ADVOCATES, dba NIFLA, *et al.*,
Petitioners,

v.

XAVIER BECERRA,
Attorney General of California, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR *AMICI CURIAE* CHARLOTTE LOZIER INSTITUTE, MARCH FOR LIFE EDUCATION FUND, AND NATIONAL PRO-LIFE WOMEN'S CAUCUS IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Considering the well-documented evidence that Pregnancy Help Centers provide vital and highly valued services to vulnerable women and children consistent with government's unqualified interest in promoting the preservation of human life, the question presented is whether federal court approval of the California Reproductive FACT Act threatens the very existence of Pregnancy Help Centers by forcing them to refer for abortion based on a never-before-recognized government interest in promoting the destruction of innocent human life.

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INTEREST OF *AMICI CURIAE*[1]

Amicus Curiae **Charlotte Lozier Institute** ("CLI" or "Lozier Institute") is the education and research arm of the Susan B. Anthony List. Named after a 19th century feminist physician who, like Susan B. Anthony, championed women's rights without sacrificing either equal opportunity or the lives of the unborn, the Lozier Institute studies federal and state policies and their impact on women's health and on child and family well-being.

In pursuit of its mission, Lozier Institute has undertaken a variety of initiatives focused on Pregnancy Help Centers ("PHCs"). For example, Lozier Institute has conducted a variety of survey research and evaluations designed to support PHC effectiveness and best practices. This research involves online survey instruments, market research, public opinion polling, message testing, and brand enhancement. Lozier Institute shares the results of this research with individual centers and center networks, combining quantitative measurements with advice on questions from presentation of services to nomenclature and avenues of advertising. Lozier Institute has also documented the popularity and reach of PHCs, supporting their efforts to communicate the value they offer to the public through low- and no-cost services to

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[1] All parties have consented to the filing of this brief. Pursuant to this Court's Rule 37.6, Amici state that no counsel for any party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of the brief.

some of the nation's most disadvantaged populations and communities.

The success of these vital nonprofits is a core part of Lozier Institute's vision for a better America. Lozier Institute has a strong interest in working to ensure that PHCs remain free to pursue their mission and live out the principles that inspire them to serve both mothers and their children.

Amicus Curiae **March for Life Education Defense Fund** ("March for Life") is a pro-life, non-religious, nonprofit organization organized under the laws of the District of Columbia, located in Washington, D.C. March for Life is one of the oldest pro-life organizations in the nation. March for Life exists to protect, defend, and respect human life at every stage; promote the worth and dignity of all unborn children; oppose abortion in all its forms. March for Life endeavors to help all like-minded Americans to protect and advocate for the lives of unborn children. March for Life was founded in 1973, following the Supreme Court's landmark decision in *Roe v. Wade*, when a group of pro-life leaders gathered to express concern that the first anniversary of the decision would come and go with no recognition. The hallmark of March for Life is its annual march on the Supreme Court and United States Capitol, held every year on or around January 22, the anniversary of *Roe v. Wade*.

Amicus Curiae **National Pro-Life Women's Caucus** is a project of the Susan B. Anthony List. It was formed in 2013 to identify, organize, and advance women officeholders at the state level who are dedicated to ending abortion in America by passing

laws that save lives. The Caucus connects them with model legislation, allied groups, ground-breaking research, legal support, and other resources needed to introduce and defend pro-life legislation. Currently hosting over two hundred women from forty-three states, these women leaders have bravely entered the public square, debunking the myth of abortion as a great liberator, a necessity for equality, even a Constitutional right. Based on a state's unqualified interest in preserving human life, as recognized in this Court's jurisprudence cited herein, these state legislators have boldly passed pro-life legislation and passionately fought to protect women and children from the violence of abortion.

SUMMARY OF THE ARGUMENT

Amici organizations make two arguments in support of Petitioners.

First, more than 2,750 Pregnancy Help Centers ("PHCs") nationwide provide vital, highly valued services to vulnerable mothers and children on a free or low-cost basis. Amici review and set forth the findings of a major report on PHC work that demonstrates the enormous social value contributed by PHCs. For example, "In 2010, [PHCs] served over 2.3 million people with pregnancy assistance, abstinence counseling and education, community outreach programs and referrals, and public health linkages."[2] "A conservative estimate of community cost savings for

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[2] Family Research Council, *A Passion to Serve: How Pregnancy Resource Centers Empower Women, Help Families, and Strengthen Communities* iv (2d ed. 2011) [hereinafter PHC Report 2d Edition], http://downloads.frc.org/EF/EF12A47.pdf.

these services during 2010 is over $100 million."[3] "In addition to specific cost savings, pregnancy centers drew on the help of 71,000 volunteers who performed an estimated 5,705,000 uncompensated hours of work in 2010."[4]

Direct services provided by PHCs, including medical PHCs, include ultrasound and other medical services, prenatal care, education on prenatal development, parenting education classes, and material assistance to mothers and children. PHCs also "play a critical role in referring women for necessary health care and support services across the country."[5] PHCs "are embedded within almost every type of community across the country,"[6] and PHC services "are generally provided at little or no cost to clients."[7]

The public value placed on PHC work manifests in various government actions. PHCs receive referrals from state health departments. Further, although primarily supported by private funding, PHCs have received financial support from both the federal and state governments. In addition, PHCs have been

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[3] *Id.* This brief uses the term "Pregnancy Help Centers" (PHCs). Other terms that have been used include the now generally disfavored "Crisis Pregnancy Center" (CPC) designation, as well as "Pregnancy Resource Centers" (PRCs), "Pregnancy Care Centers" (PCCs), and "Pregnancy Medical Centers" (PMCs).

[4] *Id.* at 1.

[5] *Id.* at 11.

[6] *Id.*

[7] *Id.* at 7.

publicly commended or otherwise recognized by government at both the state and federal levels as well as by many individual public officials and community leaders.

In the conclusion of Section I, *Amici* explain that "[PHCs] receive an extraordinarily high approval rating from the clients they serve."[8] One national PHC affiliation organization claims that PHC satisfaction ratings it measured were higher than those of Netflix, Chipotle, and the iPhone. These findings correspond closely with the findings of a 2015 Lozier Institute report that found very high ratings on experience with PHCs and the desirability of having organizations like PHCs in local communities.

Second, Amici *argue that forcing PHCs to refer for abortion undermines their mission and threatens their existence with a never-before-recognized state interest in promoting the destruction of innocent human life.*

Governments exist to protect human life, not to promote its destruction. Forcing PHCs to refer for abortion offends basic principles of government regarding the "unqualified [government] interest in the preservation of human life." *Washington v. Glucksberg*,

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[8] Brief for Pregnancy Care Organizations Care Net, Heartbeat Int'l, Inc., Nat'l Inst. of Family and Life Advocates *et al.* as *Amici Curiae* Supporting Plaintiffs-Appellees at 2, *Greater Balt. Ctr. for Pregnancy Concerns, Inc. v. Mayor and City Council of Balt.*, 683 F.3d 539 (4th Cir. 2012) (No. 11-1111) [hereinafter Brief for Pregnancy Care Organizations and Centers], http://www.aul.org/wp-content/uploads/2011/06/11-1111-Greater-Baltimore-Center-v-Mayor-and-City-Council-of-Baltimore-PCC-amicus-brief.pdf.

521 U.S. 702, 728 (1997) (quoting *Cruzan v. Director, Missouri Dept. of Health*, 497 U.S. 261, 282 (1990)). The challenged law attempts to bootstrap this Court's jurisprudence regarding an *individual* right to choose abortion into a never-before-recognized compelling interest of a *government* to promote abortion. Even if the Court recognized a governmental interest in promoting abortion, such an interest would certainly not be so compelling as to override the free speech rights of conscientiously opposed pro-life PHCs.

Abortion is a "unique act," *Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833, 852 (1992), and is "inherently different from other medical procedures," *Harris v. McRae*, 448 U.S. 297, 325 (1980). Nowhere is the "unique" and "inherently different" nature of abortion more deeply felt than in forcing pro-life individuals and institutions to promote it. For a government to compel its citizens to speak in promotion of its program to publicly fund the taking of the innocent lives of unique and individual human beings would be contrary to the entire Western political tradition stretching back to the ancient Greeks, down to the Founding era, and up to our current Constitutional government.

The goal of PHCs to provide concrete pregnancy and parenting resources is consistent with the foundational role of government and its "unqualified interest in preserving human life." *Glucksberg*, 521 U.S. at 728. The California law and the lower court ruling upholding it turn that interest on its head, with the threatened effect, if not reversed, of running PHCs out of existence to the detriment of vulnerable women and children.

ARGUMENT

More than 2,750 Pregnancy Help Centers ("PHCs") nationwide provide vital, highly valued services to vulnerable mothers and children on a free or low-cost basis. Forcing PHCs to refer for abortion undermines their mission and threatens their existence with a never-before-recognized state interest in promoting the destruction of innocent human life.

I. More than 2,750 Pregnancy Help Centers Nationwide Provide Vital, Highly Valued Services to Vulnerable Mothers and Children on a Free or Low-Cost Basis.

More than 2,750 Pregnancy Help Centers ("PHCs") nationwide provide vital social and, in some cases, medical services to vulnerable mothers and children.[9] PHCs function as important links in community public health networks. The public value placed on PHC work manifests in various government actions including referrals, funding, and recognitions. Individual consumers also strongly value the contributions of PHCs in their local communities.

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[9] The source of the 2,750 number is discussed in Jay Hobbs, *10 Numbers You Should Know About Pregnancy Centers*, Pregnancy Help News (Dec. 20, 2017), https://pregnancyhelpnews.com/phc-10-numbers, *infra* n. 11.

A. Data from 2010 Shows that Pregnancy Help Centers Served More than 2 Million People, with Estimated Community Cost Savings of More than $100 Million.

Pregnancy Help Centers (PHCs) provide a variety of free and low-cost services to pregnant women and other consumers. A 2009 report counts "more than 2,300" PHCs nationwide;[10] a 2017 publication counted 2,752 "pregnancy help locations" nationally.[11] Major national affiliation organizations for PHCs include Petitioner National Institute of Family and Life Advocates (NIFLA), Heartbeat International, and Care Net.

"Recording the scope of pregnancy center work in the United States poses challenges due to the differences in reporting among the many agencies involved, which are collaborating with increasing frequency."[12] However, the Family Research Council ("FRC"), a Washington, D.C., think tank, published a report ("PHC Report") in 2009 on pregnancy center work that uses information including "published data from the major national affiliation groups."[13] A

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[10] Family Research Council, *A Passion to Serve, A Vision for Life* 14 (2009) [hereinafter PHC Report 1st Edition], http://downloads.frc.org/EF/EF09I51.pdf.

[11] Jay Hobbs, *10 Numbers You Should Know About Pregnancy Centers*, Pregnancy Help News (Dec. 20, 2017), https://pregnancyhelpnews.com/phc-10-numbers.

[12] PHC Report 1st Edition, *supra* note 10, at 21.

[13] *Id.*

subsequent report ("PHC Report 2d Edition") published by FRC includes updated data from 2010 "to quantify the positive impact" made by PHCs.[14]

The PHC Report 2d Edition estimated the accomplishments of nearly 2,000 PHCs "using two online surveys completed by pregnancy centers affiliated with Care Net, Heartbeat International, and NIFLA."[15] Of note, "[t]he data represent only pregnancy centers in the U.S. affiliated with one or more of these organizations."[16]

The PHC Report 2d Edition includes the following findings.

- "In 2010, [PHCs] served over 2.3 million people with pregnancy assistance, abstinence counseling and education, community outreach programs and referrals, and public health linkages."[17]
- "A conservative estimate of community cost savings for these services during 2010 is over $100 million."[18]
- "In addition to specific cost savings, pregnancy centers drew on the help of 71,000 volunteers

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[14] PHC Report 2d Edition, *supra* note 2, at iv.

[15] *Id.* at 2–3.

[16] *Id.* at 3.

[17] *Id.* at iv.

[18] *Id.*

> who performed an estimated 5,705,000 uncompensated hours of work in 2010."[19]

Findings for specific services provided and estimated cost savings for those services include the following.

- "Consulting with New Clients" – Total Number 963,000 – Estimated Cost Saving of $24,076,000.[20]
- "Ultrasounds Performed" – Total Number 230,000 – Estimated Cost Saving of $57,485,000.[21]
- "Pregnancy Tests" – Total Number 720,000 – Estimated Cost Saving of $4,323,000.[22]

According to the PHC Report 2d Edition, "[PHC] services are generally provided at little or no cost to clients."[23] This is due "in large part . . . to individual charitable donations and the high proportion of volunteers who work at the centers."[24]

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[19] *Id.* at 1.

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.* at 7.

[24] *Id.*

B. Local Pregnancy Help Centers Provide a Wide Range of Social Services.

PHCs fall into two main categories based on whether they offer direct medical services. "The growth in the number of medically oriented pregnancy centers has been impressive."[25] According to the PHC Report 2d Edition, "[i]n 2008 there were approximately 700 medical [PHCs], but by 2010 the number had grown to over 1,000."[26]

As the PHC Report 2d Edition explains, and as set forth below, direct services provided by PHCs, including medical PHCs, include ultrasound and other medical services, prenatal care, education on prenatal development, parenting education classes, and material assistance to mothers and children.[27]

i. Ultrasound and other medical services

"Medical pregnancy clinics operate today under the license of a physician-medical director and, where required, under state licensure as well."[28] According to the PHC Report 2d Edition, "[m]edical services are provided by numerous certified and licensed

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[25] *Id.* at 8.

[26] *Id.*

[27] *See id.* at 7–10, 16–18, 20–21, 24.

[28] *Id.* at 7.

professionals as well as trained specialists proficient in a wide range of maternal and child health areas."[29]

Ultrasound services compose one area of medical care provided by many PHCs. "These services provide confirmation of pregnancy, determine if the pregnancy is viable (through fetal cardiac activity), establish if it is a uterine or ectopic pregnancy (which can be life-threatening), and measure how far along the pregnancy is by verifying the developing baby's gestational age."[30]

Following the provision of ultrasound services, PHCs "refer the new mom for follow-up obstetrical care to ensure entrance into prenatal care."[31] Furthermore, "[w]hen adverse medical conditions are suspected, women are referred into specialized medical care."[32]

The number of PHCs offering ultrasound services, and the number of ultrasounds provided, demonstrate the value of this service. In 2011, the PHC Report 2d Edition reported that "approximately 1,000 medical [PHCs] . . . provide limited ultrasound,"[33] that ultrasound service was provided by "approximately 54 percent of [PHCs],"[34] and, "[i]n 2010, close to 230,000 ultrasounds were performed at pregnancy medical

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[29] *Id.* at 7–8.

[30] *Id.* at 9.

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *Id.* at 8.

centers."[35] In 2017, a publication setting out data "gathered from national networks Heartbeat International, Care Net and NIFLA" reported that "six out of every 10 pregnancy centers in the U.S.—1,661 total—serve women with free limited obstetric ultrasounds" and that "pregnancy centers in the U.S. combined to deliver 248,832 ultrasounds in 2016."[36]

Furthermore, the PHC Report 2d Edition explains that the medical PHCs that provide limited ultrasound "deliver this service at little or no cost to women."[37]

In addition to ultrasound services, other specialty areas of medical care provided by PHCs include

- "obstetrical medical care and nursing,"
- "childbirth classes,"
- "labor coaching," and
- "midwife services."[38]

In addition, after birth, "some [PHCs] are able to offer"

- "lactation consultation,"

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[35] *Id.* at 9.

[36] Hobbs, *supra* note 11.

[37] PHC Report 2d Edition, *supra* note 2, at 9.

[38] *Id.* at 8.

- "nutrition consulting," and
- "social work."[39]

Furthermore, some PHCs also offer testing for sexually transmitted diseases ("STDs"). According to the Centers for Disease Control and Prevention, some STDs can cause infertility.[40] The PHC Report 2d Edition reports that in 2010 as many as 260 medical PHCs offered STD testing and treatment.[41] A 2017 publication of data gathered from national PHC networks finds, "[a]t the latest count, 577 pregnancy centers are offering free STD testing, including 400 of which offering on-site STD treatment."[42]

ii. Prenatal care

According to the *Eunice Kennedy Shriver* National Institute of Child Health and Human Development, "[h]aving a healthy pregnancy is one of the best ways to promote a healthy birth."[43] "[P]renatal care can help prevent complications and inform women about

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[39] *Id.*

[40] *Sexually Transmitted Diseases (STDs) – STDs & Infertility*, Ctrs. for Disease Control & Prevention, https://www.cdc.gov/std/infertility/ (last updated October 6, 2017).

[41] PHC Report 2d Edition, *supra* note 2, at 10.

[42] Hobbs, *supra* note 11.

[43] *What Is Prenatal Care and Why Is It Important?*, Nat'l Inst. Child Health & Hum. Dev., https://www.nichd.nih.gov/health/topics/pregnancy/conditioninfo/Pages/prenatal-care.aspx (last visited Jan. 2, 2018).

important steps they can take to protect their infant and ensure a healthy pregnancy."[44] "Getting early and regular prenatal care improves the chances of a healthy pregnancy."[45]

"Pregnancy medical clinics often make direct referrals to prenatal care for their patients who are pregnant. However," according to the PHC Report 2d Edition, "a growing number [of PHCs] are also providing prenatal care on-site."[46]

iii. Education on prenatal development

"Prenatal development education has been a primary method for [PHCs] to inform women about the changes taking place in early pregnancy and the dramatic development of human life inside of them."[47]

The vital importance of proper prenatal care to both maternal and fetal health is well established. Regular prenatal care can "[r]educe the risk of pregnancy complications" as well as the "infant's risk for complications."[48] "[PHC] staff/volunteers inform their clients about the importance of eating well, getting exercise, avoiding smoking and alcohol, and coping

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[44] *Id.*

[45] *Id.*

[46] PHC Report 2d Edition, *supra* note 2, at 9.

[47] *Id.* at 17.

[48] *What Is Prenatal Care and Why Is It Important?*, Nat'l Inst. Child Health & Hum. Dev., *supra* note 43.

with morning sickness or discomfort during pregnancy."[49]

iv. Parenting education classes

"Parenting education has become a core service provided [by PHCs] to equip new mothers and fathers to be stronger and more nurturing parents."[50] According to the PHC Report 2d Edition, "Nationally, over 78 percent of centers offer this specialized education either through direct services on premises or in nearby churches, schools, and other locations."[51] Further, "more than 292,000 clients attended [PHC] parenting programs" in 2010.[52]

Topics covered in parenting education include

- "child development,"
- "bonding,"
- "nutritional counseling,"
- "communication skills,"
- "finance management,"
- "safety and injury prevention,"
- "family rules," and

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[49] PHC Report 2d Edition, *supra* note 2, at 17.

[50] *Id.* at 21.

[51] *Id.*

[52] *Id.*

- "positive discipline strategies."[53]

In addition, parenting education classes "also typically cover"

- "life skills topics to strengthen the development and resilience of mothers-to-be,"
- "strategies for stress management," and
- "job skills training."[54]

v. Material assistance to mothers and children

According to the PHC Report 2d Edition, "[n]early every [PHC] provides clients with material support for pregnancy and infant care."[55] This support "may include"

- "maternity clothing,"
- "baby clothes and furniture,"
- "housing assistance," and
- "nutritional counseling and resources."[56]

Just as important as these goods themselves, PHCs provide this assistance in a warm and supporting environment.

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[53] *Id.*

[54] *Id.*

[55] *Id.*

[56] *Id.*

C. Pregnancy Help Centers Function as Important Links in Broader Community Public Health Networks.

In addition to the goods and services PHCs provide directly, PHCs also "play a critical role in referring women for necessary health care and support services across the country."[57] According to the PHC Report 2d Edition, "[r]eferrals to community agencies expose women to key education interventions spanning childbirth, breast-feeding, nutrition, sudden infant death syndrome (SIDS), unintentional and intentional injury prevention, and child safety seat instruction."[58] Examples of community referrals include:

- "Breast-feeding Classes,"
- "Social Services,"
- "State Children's Health Insurance Program (S-CHIP),"
- "Women Infants & Children (WIC),"
- "Housing Support,"
- "Maternity Homes,"
- "Childcare Programs,"
- "Prenatal Care,"
- "Nutrition Classes,"
- "Parenting Classes,"

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[57] *Id.* at 11.

[58] *Id.*

- "Community Health Centers,"
- "Financial Assistance,"
- "Food Banks and Pantries,"
- "Legal Aid/Assistance,"
- "Medicaid,"
- "Medical Services,"
- "Postpartum Depression Care," and
- "Transportation Help."[59]

PHCs "are embedded within almost every type of community across the country."[60] This reality underlies and magnifies the importance of the PHC referring role.

D. The Federal and State Governments Recognize and Value Pregnancy Help Center Contributions.

The public value placed on PHC work manifests in various government actions.

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[59] *Id.* at 12–13.

[60] *Id.* at 11.

i. State health agencies refer pregnant women to Pregnancy Help Centers.

"In 2009, 92 percent of Care Net [PHCs] reported having clients referred to them from state health departments."[61] "These referrals demonstrate widespread support and trust in [PHCs]."[62] Indeed, many state health departments provide PHC contact or other information in materials published on publicly accessible websites. *See Woman's Right to Know – Find a Service by County*, Ariz. Dep't of Health Servs. (listing resources, including PHCs, by county for women considering abortion);[63] *Directory of Helpful Services in Arkansas*, Ark. Dep't of Health (2017) (listing locations where pregnant women can receive support during pregnancy);[64] *Directory of Human Services for Delaware*, Del. Health and Social Servs. (2015) (including information for at least one PHC);[65] *Pregnancy*, Fla. Dep't of Health (including link to a

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[61] Brief for Pregnancy Care Organizations and Centers, *supra* note 8, at 4 (citing Care Net, *2009 Care Net National Pregnancy Center Statistics* (2009)).

[62] *Id.*

[63] *Available at* http://azdhs.gov/prevention/womens-childrens-health/informed-consent/index.php#find-a-service (last visited Jan. 2, 2018).

[64] *Available at* http://www.healthy.arkansas.gov/images/uploads/pdf/Directory_of_Helpful_Services_2017.pdf.

[65] *Available at* http://dhss.delaware.gov/dhss/dssc/files/2015_hsdirectory.pdf.

statewide network of PHCs);[66] *Abortion: A Woman's Right to Know*, Ga. Dep't of Pub. Health (2016) (noting availability of private organizations that "offer a variety of services to meet the needs of pregnant women" but "do not offer abortions or abortion referrals");[67] *Directory of Pregnancy and Child Health Services*, Idaho Dep't of Health & Welfare (2017) (including a directory of PHCs providing pregnancy services);[68] *If You are Pregnant: Directory of Available Services*, Kan. Dep't of Health & Env't Bureau of Family Health (2016) (providing a directory of available services for pregnant women, including PHCs);[69] *Pregnancy Resource Centers*, La. Dep't of Health (providing a link to multiple lists of PHCs);[70] *Locations Offering Free Ultrasounds, Organized by Geographic Region*, Mich. Dep't of Community Health (providing a list of locations, including many PHCs, where women

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[66] *Available at* http://www.floridahealth.gov/programs-and-services/womens-health/pregnancy/index.html#heading_1 (last visited Jan. 2, 2018).

[67] *Available at* https://dph.georgia.gov/sites/dph.georgia.gov/files/related_files/site_page/Abortion-A%20Womens%20Right%20to%20Know_2016_Eng.pdf.

[68] *Available at* http://healthandwelfare.idaho.gov/Portals/0/Health/MoreInformation/PregDirectory_WebVersion_May2017.pdf.pdf.

[69] *Available at* http://www.womansrighttoknow.org/download/Directory_of_Services_English.pdf.

[70] *Available at* http://www.dhh.louisiana.gov/index.cfm/page/2421 (last visited Jan. 2, 2018).

can procure free ultrasounds);[71] *If You Are Pregnant: A Directory of Services Available in Minnesota*, Minn. Dep't of Health (including a directory of services available to pregnant women, including PHCs);[72] *Alternatives to Abortion Program*, Mo. Dep't of Health & Senior Servs. (providing a searchable map of counties in Missouri and listing information on abortion alternatives, including PHCs);[73] *Pregnant? It's Your Decision. We're Here to Help.*, N.D. Dep't of Human Servs. (including contact information for PHCs as part of the state's abortion alternatives program);[74] *Where to Get Help With Your Pregnancy: 2011 Resource Directory*, Ohio Dep't of Health (2011) (listing service options for pregnant women, including many PHCs);[75] *A Woman's Right to Know Resource Directory*, Okla. Board of Med. Licensure & Supervision (providing a directory of resources including information about PHCs);[76] *Alternatives to Abortion Services Program*, Pa.

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[71] *Available at* http://www.michigan.gov/documents/mdch/ultrasound_196523_7.pdf (last updated Mar. 18, 2015).

[72] *Available at* http://www.health.state.mn.us/wrtk/directoryenglish2017.pdf (last updated Jan. 2017).

[73] *Available at* https://dss.mo.gov/fsd/a2a/ (last visited Jan. 2, 2018).

[74] *Available at* https://www.nd.gov/dhs/info/pubs/docs/dn-88-alternatives-to-abortion.pdf (last visited Jan. 2, 2018).

[75] *Available at* https://www.odh.ohio.gov/-/media/ODH/ASSETS/Files/dspc/complaints—nursing-homes/PregnacyResDirectory2011_updated.pdf?la=en.

[76] *Available at* http://www.awomansright.org/pdf/ResourceDirectory.pdf (last visited Jan. 2, 2018).

Dep't of Human Servs. (providing link to Real Alternatives, a network of PHCs operating in Pennsylvania);[77] *Pregnancy Help Centers*, S.D. Dep't of Health (providing contact information for PHCs);[78] *Woman's Right to Know*, Tex. Dep't of State Health Servs. (including a downloadable resource directory that provides a list of PHCs);[79] *Free Ultrasound Providers*, Va. Dep't of Health (listing providers of free ultrasounds for pregnant women in Virginia, including PHCs);[80] *Women's Right to Know Resource Directory*, W. Va. Dep't of Health & Human Resources (Nov. 13, 2015) (listing PHCs in the state);[81] *Directory of Services for Women, Children and Families*, Wis. Dep't of Health Servs. (2015–2016) (providing resources for pregnant women, including contact information for PHCs).[82]

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[77] *Available at* http://www.dhs.pa.gov/citizens/reproductivehealth/alternativestoabortionservicesprogram/ (last visited Jan. 2, 2018).

[78] *Available at* https://doh.sd.gov/family/pregnancy/helpcenters.aspx (last visited Jan. 2, 2018).

[79] *Available at* http://www.dshs.texas.gov/wrtk/ (last updated Feb. 9, 2017).

[80] *Available at* http://www.vdh.virginia.gov/pregnancy/free-ultrasound-providers/ (last visited Jan. 2, 2018).

[81] *Available at* http://www.wvdhhr.org/wrtk/wrtk_resource_directory_decembe_2015.pdf.

[82] *Available at* https://www.dhs.wisconsin.gov/publications/p4/p40073.pdf.

ii. Local Pregnancy Help Centers have received public funds.

One of the "hallmarks" of PHC operations is that "funds are raised locally and spent locally."[83] More than 80 percent of the PHCs covered by the PHC Report 2d Edition "receive[d] no public funding at all."[84]

However, PHCs have received financial support from both the federal and state governments. At the federal level, "[p]ublic . . . funding of [PHCs] began in 1996 when the federal welfare reform law allocated $50 million to Title V abstinence-only education programs, which some states made available to [PHCs]."[85] "The first direct allocation of federal grants to [PHCs] began in 2000 under the maternal and child health block grant's Special Projects of Regional Significance Program."[86] Under this program, "[c]lose to $3 million . . . was directed that year to groups that identify as [PHCs], and that amount doubled to $6 million in 2002."[87]

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[83] PHC Report 2d Edition, *supra* note 2, at 31.

[84] *Id.*

[85] Nat'l Abortion Fed'n, *Crisis Pregnancy Centers: An Affront to Choice* 11 (2006), https://www.prochoice.org/pubs_research/publications/downloads/public_policy/cpc_report.pdf [hereinafter NAF Report].

[86] *Id.* at 11–12.

[87] *Id.* at 12 (citing Vitoria Lin & Cynthia Dailard, *Crisis Pregnancy Centers Seek to Increase Political Clout, Secure Government Subsidy*, The Guttmacher Report on Public Policy, Feb. 2002, Vol. 5, No. 1.).

At the state level, "Legislators frequently attempt to fund [PHCs] . . . through state-sponsored programs, specific grants, or tax credits."[88] According to another source, "in 2009, at least eleven states provided direct taxpayer funding to [PHCs], or approved such funding."[89] More, "At least twenty-six states . . . have approved 'Choose Life' specialty license plate programs where the proceeds benefit [PHCs] and other organizations providing abortion alternatives. These plates have raised nearly $14,000,000 for [PHCs] and abortion alternatives."[90]

iii. Pregnancy Help Centers have been recognized by government at both the federal and state levels.

PHC contributions have been recognized by government at both the state and federal levels. At the federal level, 56 PHCs "were honored at a [2008] White House event" where "[t]hen-Assistant Secretary of Health Dr. Joxel Garcia conducted the ceremony commending outstanding centers. . . . The awards were bestowed in the name of the President as part of the recognition program of USA Freedom Corps."[91]

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[88] *Id.*

[89] Brief for Pregnancy Care Organizations and Centers, *supra* note 8, at 25.

[90] *Id.*

[91] PHC Report 1st Edition, *supra* note 10, at 64.

At the state level, many legislatures have passed resolutions commending or otherwise recognizing PHCs.[92] In one state a governor issued a proclamation.[93] Specific commendations include:

- "[P]regnancy resource centers provide women with compassionate and confidential peer

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[92] H.R.J. Res. 16, 2011 Leg., Reg. Sess., 2011 Ala. Laws 184; H.R. Con. Res. 2034, 50th Leg., 1st Reg. Sess. (Ariz. 2011); H.R. Res. 1019, 90th Gen. Assemb., Reg. Sess., 2015 Ark. Acts 266; S. Res. 15-003, 70th Gen. Assemb., 1st Reg. Sess., 2015 Colo. Sess. Laws 2151; S. Res. 1326, 2012 Leg., 114 Reg. Sess. (Fla. 2012); H.R. Res. 1306, 2016 Leg., Reg. Sess. (Ga. 2016); S. Res. 1706, 2017 Leg., Reg. Sess. (Kan. 2017); S. Con. Res. 72, 2016 Leg., Reg. Sess. (La. 2016); H.R. Res. 1826, 96th Gen. Assemb., 1st Reg. Sess. (Mo. 2011); H.R. Con. Res. 31, 2012 Leg., Reg. Sess. (N.H. 2012); 2010 Okla. Sess. Laws 2260; S. Con. Res. 1283, 119th Gen. Assemb., Reg. Sess. (S.C. 2012); S. Con. Res. 1, 86th Leg., Reg. Sess. (S.D. 2011); H.R. Res. 110, 107th Gen. Assemb., Reg. Sess. (Tenn. 2011); S. Res. 827, 82nd Leg., Reg. Sess. (Tex. 2011); 2012 Utah Laws 2556; 2012 Va. Acts 2326; S. Res. 40, 2011 Leg., Reg. Sess. (W. Va. 2011); S.J. Res. 28, 2011 Leg., Reg. Sess. (Wis. 2011); *see also* H.R. Con. Res. 52, 130th Gen. Assemb., Reg. Sess. (Ohio 2014) (only passed originating chamber). These resolutions have varying means of enactment and can be the product of one legislative chamber alone or both chambers, depending on the type of resolution in question. *See also* Jeanneane Maxon, *Positive Pregnancy Center Resolutions Sweep the Country*, Heartbeat International, https://www.heartbeatinternational.org/positive-pregnancy-center-resolutions-sweep-the-country (last visited Jan. 2, 2018).

[93] Gov. Dave Heineman, *State of Nebraska Proclamation* (Mar. 6, 2014), http://gallery.mailchimp.com/614d88a5ced370982c9aa65578879c/files/NE_Governor_s_Proclamation_3.6.14.pdf.

counseling in a nonjudgmental manner, regardless of their pregnancy outcomes . . . ;"[94]

- "[P]regnancy resource centers ensure that women receive prenatal information and services that lead to the birth of healthy infants . . . ;"[95] and
- "Pregnancy resource centers offer women free, confidential services, including pregnancy testing, advocacy, housing, medical referrals, counseling, and childbirth and parenting classes . . . ."[96]

Individual public officials have also recognized PHCs. This recognition is bipartisan, as evidenced by the following representative examples.

- "I strongly commend the life-affirming work of pregnancy care centers. The success rates and national expansion of these pregnancy care centers are a testament to their invaluable work in the lives of communities and individuals over the years. *These networks provide services that are often unavailable elsewhere to expectant mothers.*" – Rep. Daniel Lipinski (D-Ill.)[97]

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[94] H.R. Res. 1306, 2016 Leg., Reg. Sess. (Ga. 2016).

[95] S. Res. 1326, 2012 Leg., 114 Reg. Sess. (Fla. 2012).

[96] S. Res. 15-003, 70th Gen. Assemb., 1st Reg. Sess., 2015 Colo. Sess. Laws 2151.

[97] PHC Report 1st Edition, *supra* note 10, at 22 (formatting altered, emphasis added, and internal quotations omitted).

- "Pregnancy Resource Centers give women a safe and supportive environment to ask questions and receive the medical care and information needed to ensure healthy pregnancies and births." – Rep. Heath Shuler (D-N.C.)[98]

- "The more than 2,000 pregnancy care centers across the country are an expression of charity and genuine love for people dealing with life-changing situations. The outpouring of local support over the years shown by supporters, organizers, and staff embody the spirit of volunteerism and *truly make pregnancy care centers one of the most important grassroots movements in American history*." – Rep. John Boehner (R-Ohio)[99]

E. Individual Consumers Strongly Value the Contributions Provided by Pregnancy Help Centers.

"[PHCs] receive an extraordinarily high approval rating from the clients they serve."[100] According to one report, "98.7 percent of Care Net-affiliated center clients who completed a written exit survey in 2013

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[98] *Id.* at 68 (formatting altered and internal quotations omitted).

[99] *Id.* (formatting altered, emphasis added, and internal quotations omitted).

[100] Brief for Pregnancy Care Organizations and Centers, *supra* note 8, at 2.

indicated that their overall experience at the center was positive. This number was 97% in 2014."[101]

Putting these 2013 and 2014 results in context, Care Net claimed in 2016 that "[t]his satisfaction rating is higher than that of Netflix, Chipotle, and the iPhone."[102]

The Care Net statistics correspond very well with *Amicus* Lozier Institute's own findings. In a 2015 report called Turning Hearts Toward Life II, the Lozier Institute conducted research "via a national survey of 1,300 respondents" and found that the "reactions to the centers and their work were overwhelmingly positive."[103] At one point this research "[d]rill[ed] down with those respondents who had either been to a PHC or knew someone who had sought its services" and found that "nearly nine in 10 females and eight in 10 males described their experience as 'very positive' or 'somewhat positive.'"[104] *Remarkably, "these percentages*

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[101] Ardee Coolidge, *Care Net Pregnancy Centers Saved 70,000 Lives in 2015*, Care Net (Sept. 1, 2016), https://www.care-net.org/abundant-life-blog/care-net-pregnancy-centers-saved-70000-lives-in-2015.

[102] *Id.* (linking to sources).

[103] Chuck Donovan, *Pregnancy Centers: A Consensus Service to Women and Children*, Charlotte Lozier Inst. (Apr. 13, 2017), https://lozierinstitute.org/pregnancy-help-centers-a-consensus-service-to-women-and-children/.

[104] *Id.*

were almost the same whether the person responding self-described as pro-life or pro-choice."[105]

Given the extremely high favorability ratings PHCs enjoy, it is no surprise that people want them in their communities. The survey referenced above "went on to ask whether the respondents would desire for a PHC to be in their community and if the respondent regarded a PHC as a necessary community resource for 'free services to women with an unexpected pregnancy.'"[106] "Regarding the desirability of having a PHC in the community" and "asking only those respondents who were not sure whether there was a PHC in their community," 73 percent of women "replied that a PHC was desirable."[107] "Moreover, fully 92 percent of females participating in the poll answered that they regarded such centers as 'very necessary[']or 'fairly necessary.'"[108] Of note, "The poll question made it very plain that these pro-life centers neither offer nor even refer for abortions."[109]

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[105] *Id.* (emphasis added).

[106] *Id.*

[107] *Id.*

[108] *Id.*

[109] *Id.*

II. Forcing Pregnancy Help Centers to Refer for Abortion Undermines Their Mission and Threatens Their Existence with a Never-Before-Recognized State Interest in Promoting the Destruction of Innocent Human Life.

Governments exist to protect human life, not to promote its destruction. *See* Letter from Thomas Jefferson to the Republican Citizens of Washington County, Maryland (March 31, 1809), *in* 8 *The Writings of Thomas Jefferson* 165 (H.A. Washington ed. 1871) (stating that "[t]he care of human life and happiness, and not their destruction, is the first and only legitimate object of good government"). Forcing PHCs to refer for abortion undermines their mission and offends basic principles of government regarding the "unqualified [governmental] interest in the preservation of human life." *Washington v. Glucksberg*, 521 U.S. 702, 728 (1997) (quoting *Cruzan v. Director, Missouri Dept. of Health*, 497 U.S. 261, 282 (1990)).

By forcing PHCs to refer for abortion, California attempts to bootstrap this Court's jurisprudence about the *individual* right to choose abortion into a never-before-recognized compelling *government* interest in promoting abortion. This Court's jurisprudence recognizes that a state's unique interest in the "preservation" of human life is so foundational that it may affirmatively promote that interest in regulating informed consent for abortion protocols. *See Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833, 883 (1992) (government may "further its legitimate goal of protecting the life of the unborn by enacting legislation aimed at ensuring a decision that is mature

and informed, even when, in so doing, the State expresses a preference for childbirth over abortion"). But this Court's jurisprudence simply does not and should not implicate a corollary unqualified interest of a government to promote the "destruction" of unborn human life.

Even if the Court chose to recognize a governmental interest in promoting abortion, that interest would not outweigh the First Amendment rights at stake here. There is a colossal distinction between, on the one hand, a constitutional right of an *individual* woman "to decide whether to terminate her pregnancy," as recognized in *Casey*, 505 U.S. at 874,[110] and, on the other hand, *government* conscripting pro-life PHCs into referring for abortion in violation of their foundational morals, commitments, and ideals. A new, constitutionally protected right of government to promote abortion – not just by its own employees and agencies, but also by means of forcing PHCs to participate in their project – would devastate the mission of pro-life organizations and offend basic principles of government in a free society.

In weighing the balance of interests presented by this case, the Court should emphasize what it has previously recognized—that abortion is a "unique act," *Casey*, 505 U.S. at 852, and is "inherently different from other medical procedures," *Harris v. McRae*, 448 U.S. 297, 325 (1980). Abortion is different from other medical procedures because in abortion "the fetus will

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[110] To be clear, *Amici* and their counsel respectfully disagree with the holding of the *Casey* decision reaffirming the essential holding of *Roe v. Wade*, 410 U.S. 113 (1973).

be killed." *Gonzalez v. Carhart*, 550 U.S. 124, 159 (2007).[111] It is also unique because of the impact of the abortion on the woman herself. *Id. at* 159 ("Whether to have an abortion requires a difficult and painful moral decision which some women come to regret."). In the words of one federal court, "[t]he rationality of distinguishing between abortion services and other medical services when regulating physicians or women's healthcare has long been acknowledged by Supreme Court precedent." *Greenville Women's Clinic v. Bryant*, 222 F.3d 157, 173 (4th Cir. 2000).

Nowhere is the "unique" and "inherently different" nature of abortion more deeply felt than in forcing pro-life individuals and institutions to promote or participate in it.

For the people who are employed by, donate to, or volunteer with local PHCs, the work is truly a labor of love. PHCs and the people who support and staff them are devoted to loving both mothers and children through practical action. In many if not most cases, this devotion springs from deeply held religious or moral commitments about the value of every human

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[111] *See also* Keith L. Moore, *Before We Are Born: Essentials of Embryology* 2 (Saunders ed., 7th ed. 2008) ("[The zygote], formed by the union of an oocyte and a sperm, is the beginning of a new human being."); ML Condic, *The Origin of Human Life at Fertilization: Quotes Compiled from Medical Textbooks and Peer-Reviewed Scientific Literature* (Nov. 2017) (compiling sixty-one short quotes from medical school textbooks and peer-reviewed scientific journals published since 2001 identifying sperm-egg fusion as the beginning of a new individual human life), *available at* http://bdfund.org/wp-content/uploads/2016/05/Condic-Sources-Embryology.pdf.

life and the obligation to serve those in society who are suffering, in crisis, or at disadvantage. *Cf. Casey*, 505 U.S. at 853 (recognizing that "reasonable people" will differ as to the morality of abortion); *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 270 (1993) (stating that "there are common and respectable reasons for opposing [abortion]"). Forcing PHCs to refer for abortion would undermine their mission and unconstitutionally burden their right to express the principles that inspire them to serve vulnerable mothers and children.

Importantly, the goal of PHCs to provide concrete pregnancy and parenting resources is consistent with the foundational role of government and its "unqualified interest in preserving human life." *Glucksberg*, 521 U.S. at 728. The California law and the lower court ruling upholding it turn that interest on its head, with the threatened effect, if not reversed, of running PHCs out of existence to the detriment of vulnerable women and children.

Whatever interest California might have in providing information through its own government programs about the availability of abortion, such interest is certainly not compelling enough that it may burden Free Speech protections by forcing PHCs to refer for abortion. For a government to compel its citizens to speak in promotion of its program to publicly fund the taking of the lives of unique and individual human beings would be contrary to the entire Western political tradition stretching back to the ancient Greeks, down to the Founding era, and up to our current Constitutional government. Just as the First Amendment would prohibit government from forcing

Quaker community centers to post signs referring people to military combat positions, likewise, pro-life individuals and institutions simply cannot and should not be forced to participate in, promote, or refer for abortion.

CONCLUSION

For the foregoing reasons, *Amici* respectfully urge this Court to reverse the judgment below, rejecting its underlying premise that there is a compelling state interest in promoting abortion, and protecting the freedom of Pregnancy Help Centers to serve mothers and children in a way that is consistent with their mission and values.

Respectfully submitted,

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